

ID: CCA_2009070210061237

Number: **200932054**

Office:

Release Date: 8/7/2009

UILC: 6229.02-00

From:

Sent: Thursday, July 02, 2009 10:06:15 AM

To:

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Subject: RE: TMP Question In Multiple Tiering Case

The answer is the same in all cases. TEFRA was enacted before LLC's came into existence. Before LLC's came into existence, if the TMP was another partnership we could get the TMP of that second tier entity to sign on behalf of the second tier entity. That was because the TMP of the second tier entity had to be a general partner authorized under state law to bind the second tier entity. But his status as a TMP, by itself, gave him no such power. A TMP's powers are defined by statute and do not include the power to bind the TEFRA entity itself - that comes exclusively from state law.

Today, if the TMP is an LLC, its TMP does not necessarily have to be a manager under state law authorized to bind the LLC. See Treas. Reg. 301.6231(a)(7)-2 (if no LLC member is a manager, all members are eligible to be TMP). Consequently, we must look exclusively to a manager under state law that can bind (sign documents on behalf of) the LLC.

In your case, the TMP is itself a state law partnership. So when getting that entity to sign a statute extension as TMP you must get its general partner to execute the document. It should not matter whether the general partner is also the TMP of the second tier entity - but we generally prefer to use the general partner charged with tax matters (who is likely to be the TMP in any event). Using the general partner charged with tax matters also avoids any issues as to whether, under the partnership agreement and state law, the general partner may be acting outside the scope of his state law authority.